

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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DENISE CASSESE,

Plaintiff,

-against-

**ORDER**

CV 05-2724 (ADS)(ARL)

WASHINGTON MUTUAL, INC., et al.,

Defendants.

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**LINDSAY, Magistrate Judge:**

Before the court is the plaintiffs' motion seeking to compel John Williams and Brenda Komar, absent class members who have objected to the preliminarily approved settlement, to appear for depositions on September 13, 2011 or, in the alternative, to attend the Final Approval Hearing scheduled for September 15, 2011. Ms. Komar has responded to the motion by submitting a cross-motion dated September 8, 2011 seeking to quash the deposition notice served on her on September 6, 2011. Ms. Komar resides in Oregon. Mr. Williams has opposed the plaintiffs' motion to compel by letter dated September 8, 2011. Mr. Williams was served with a subpoena issued from the District of Colorado. Mr. Williams also moved for a protective order in the District of Colorado. Counsel for the plaintiffs has advised the court by telephone that in order to expedite resolution of their motion, they will not be responding to the cross-motion to quash.

As a threshold matter, Ms. Komar was improperly served with a Notice of Deposition and Request for the Production of Documents issued from the Eastern District. "The Federal Rules of Civil Procedure do not provide for discovery from absent class member as parties." *In re Publication Paper Antitrust Litigation*, 2005 U.S. Dist LEXIS 13681 \*4 (D. Conn. Jul. 5, 2005). Moreover pursuant to Fed. R. Civ. P. 45(a)(2), a subpoena for attendance at a deposition or for production of documents must issue from the court for the district where the deposition is to be taken or the production is to be made. Ms. Komar should have been served with a subpoena from the district court in Oregon. Similarly, the motion to compel Mr. William's subpoena must be directed to the issuing court, that being, the District of Colorado. Fed. R. Civ. P. 45(c)(2)(B)(I). Accordingly, the motion to compel is denied.

The plaintiffs' request to command the appearance of witnesses at the hearing must be made to the District Judge.

Dated: Central Islip, New York  
September 12, 2011

**SO ORDERED:**

\_\_\_\_\_/s/\_\_\_\_\_  
ARLENE R. LINDSAY  
United States Magistrate Judge

